

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA TRANSPORTATION REGULATION BOARD

In the Matter of an Application by Potlatch
Corporation for a Variance from Vertical
Clearance Requirements

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Richard C. Luis on November 21, 1995 at the Transportation Regulation Board in South St. Paul. The record in this matter closed at the conclusion of the hearing on the same day.

David C. Pritchett, Esq., Rudy, Gassert, Yetka and Doran, P.A., 123 Avenue C., Cloquet, MN 55720-1593, and Charles Buscher, Project Engineer, Potlatch Corporation, 2201 Avenue B., P.O. Box 503, Cloquet, MN 55720, appeared on behalf of Potlatch Corporation ("Applicant", "Company", "Potlatch"). Ronald F. Mattson, Mn.DOT Office of Railroads and Waterways, 395 John Ireland Boulevard (Mail Station 470), St. Paul, MN 55155, appeared on behalf of the staff of the Minnesota Department of Transportation. Michael McKay, Acting Administrative Director of the Transportation Regulation Board, and Board Members Lyle Mehrkens and Timothy Perry also attended the hearing.

NOTICE

Notice is hereby given that, pursuant to Minn. Stat. § 14.61, and the Rules of Practice of the Transportation Regulation Board and the Rules of the Office of Administrative Hearings, exceptions to this Report, if any, by any party adversely affected must be filed within 20 days of the mailing date hereof with the Transportation Regulation Board, Minnesota Administrative Truck Center, 254 Livestock Exchange Building, 100 Stockyards Road, South St. Paul, Minnesota 55075. Exceptions must be specific and stated and numbered separately. Proposed Findings of Fact, Conclusions and Order should be included, and copies thereof shall be served upon all parties. If desired, a reply to exceptions may be filed and served within ten days after the service of the exceptions to which reply is made. Oral argument before a majority of the Board may be permitted to all parties adversely affected by the Administrative Law Judge's recommendation who request such argument. Such request must accompany the filed exceptions or reply, and an original and five copies of each document must be filed with the Board.

The Minnesota Transportation Regulation Board will make the final determination of the matter after the expiration of the period for filing exceptions as set forth above, or after oral argument, if such is requested and had in the matter.

Further notice is hereby given that the Board may, at its own discretion, accept or reject the Administrative Law Judge's recommendation and that said recommendation has no legal effect unless expressly adopted by the Board as its final order.

STATEMENT OF ISSUE

Should a variance from the 22-foot vertical clearance requirement of Minn. Stat. § 219.46, subd. 1 (d) (3) be granted to Potlatch Corporation for construction of a conveyor belt system passing 18' 03/16" over the tracks of the Duluth and Northeastern Railroad at Potlatch's plant in Cloquet, Minnesota?

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Potlatch Corporation owns a plant in Cloquet, Minnesota where it manufactures approximately 550 tons per day of pulp and 400 to 500 tons per day of paper. The Company is in the process of expanding its pulp production operation so that it can produce approximately 1150 tons of pulp daily, enough to supply all its needs for paper production at both the Cloquet plant and its paper plant in Brainerd (both plants produce approximately 400 to 500 tons per day of high-quality, coated sheet paper of the type used in printed advertising and for annual reports).

2. In connection with expansion of its pulp production operation, Potlatch is building a new conveyor belt system to move wood chips approximately 800 feet east from piles of chips in the Chip Storage Area to a "Digester Building", in which the chips are "cooked" as part of the process of transforming wood into pulp. The conveyor belt will pass over a pre-existing, single-track rail line in the same area. The conveyor line and rail line are angled such that the conveyor will run above the railroad track for a distance of approximately 20 feet. At the lowest point of the intersection (the belt is to be built with a 10° slope to prevent the chips from sliding backward), the bottom of the conveyor is planned to be 18' 03/16" above the top of the rails, approximately four feet lower than the minimum vertical clearance required by Minn. Stat. § 197.46, Subd. 1 (d) (3).

3. The lower-than-standard clearance is mandated by the presence of a pre-existing obstruction, a conveyor belt that transfers wood bark from the "Wood Room" (the raw material arriving at the plant is eight-foot lengths of unstripped logs, from which the bark is stripped off by drums in the "Wood Room") to the other side of the mill, where it is burned as fuel for the plant's boilers. This conveyor system is approximately 23 feet above ground. In order to maintain the proper slope on the new conveyor to be built to transfer wood chips to the Digester Building, the new conveyor and the two-foot high housing (called a "gallery") that protects the product conveyed from inclement weather, must pass underneath the existing conveyor. This junction is approximately 150 feet east of the Chip Storage Area and several hundred feet west of the intersection

of the new conveyor belt and the rail line. In order to maintain the slope of the new conveyor belt so it can convey chips properly from the chip storage area to the Digester Building, it must pass over the rail line farther to the east at a height below the standard minimum clearance.

4. The Company has invested \$20,000,000 in the construction of the new "Reclaim and Conveyor" system described above. To build the conveyor system at a height great enough to meet the clearance requirement would involve demolition or relocation of the bark-conveying system and/or relocation of the railroad line. A railroad line directly to the plant is necessary for the transportation of raw material and chemicals in to the plant and the transportation out from the plant of the finished products, pulp and paper.

5. The rail line segment material to this application runs on a southwest to northeast angle across the site also crossed by the two conveyors described above. The rail line is part of the Duluth and Northeastern Railroad, a subsidiary of Potlatch, and is operated by Potlatch employees, who take over operation of the trains inside the Applicant's property from Burlington Northern employees. Rail cars destined for Potlatch are sidetracked at the plant entrance in order to change crews.

6. The site containing the conveyor belts and portion of railroad trackage material to this application has a traffic volume of approximately two trains per day, carrying wood, wood products, paper and chemicals used in various plant manufacturing processes. All the cars moving on that portion of track are standard, 14-foot boxcars or tank cars hauling chemicals, which tend to be of an even lower height. There is no need for Potlatch employees or anyone else to be on top of any railroad cars in this area, and such riding has never been done. No accidents or injuries have ever resulted from operations of the Duluth and Northeastern Railroad at the Potlatch plant site in Cloquet. Most railroad operations in this area occur during daylight hours and on weekdays. Safety officials of the Cloquet plant and Potlatch's railroad subsidiary have reviewed and approved the Company's plan for building of the new conveyor system.

7. The \$20,000,000 spent on the new Reclaim and Conveyor system for which the variance is sought is part of a \$500,000,000 transformation of the plant (see Finding 1) of which \$150,000,000 has been spent already.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and Transportation Regulation Board have jurisdiction over the subject matter of the hearing.

2. Proper notice of the hearing was timely given, and all relevant, substantive and procedural requirements of law or rule have been fulfilled and, therefore, the matter is properly before the Administrative Law Judge.

3. Any of the foregoing Findings of Fact more properly designated as Conclusions of Law are hereby adopted as such.

4. Construction of the new chip conveyor system such that it will pass over the track of the Duluth and Northeastern Railroad at a height of 18' 03/16" does not create an unduly hazardous condition within the meaning of Minn. Stat. § 219.47, Subd. 1 and Minn. Rule 8830.3000.

5. To require Potlatch to construct its new chip conveyor so that it is at a height of 22 feet or greater over the track of the Duluth and Northeastern Railroad is unreasonable and unnecessary within the meaning of Minn. Stat. § 219.47, Subd. 1. The only reasonable construction design for transfer of chips by means of the new conveyor system is to build the new conveyor under an existing conveyor, which results in the new conveyor's being 18' 03/16" above the railroad tracks. It is unnecessary to require a higher clearance over the tracks in order to assure a safe, non-hazardous working area for employees of Potlatch.

6. It is appropriate for Potlatch to install horizontal No Clearance signs over the center line of the track on each side of the conveyor housing where the new chip conveyor passes over the tracks of the Duluth and Northeastern Railroad, mounted such that the bottoms of the signs are no lower than 18' 03/16" above the top of the tracks, and that the signs be illuminated such that they are clear and legible at all times.

THIS REPORT IS NOT AN ORDER AND NO AUTHORITY IS GRANTED HEREIN. THE TRANSPORTATION REGULATION BOARD WILL ISSUE THE ORDER OF AUTHORITY WHICH MAY ADOPT OR DIFFER FROM THE FOLLOWING RECOMMENDATIONS.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that the Transportation Regulation Board issue an Order GRANTING the variance application of Potlatch Corporation to allow construction of the new chip conveyor system at a height of 18' 03/16" above the existing top of rail at its plant in Cloquet, Minnesota.

IT IS RECOMMENDED FURTHER that the Transportation Regulation Board order Potlatch to install Standard (see Minn. Rule 8830.9930) Horizontal No Clearance signs over the center line of the tracks on each side of the conveyor gallery of the new chip conveyor system in a manner that allows the signs to be visible, legible and illuminated properly 24 hours a day and in such a position that the signs do not hang lower than 18' 03/16" above the tops of the rails; and that the Company notify the Minnesota Department of Transportation for purposes of arranging an on-site safety inspection when the construction project is completed.

Dated this 19th day of December, 1995

/s/

RICHARD C. LUIS

Administrative Law Judge

Reported: Taped

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

RCL